A11

ENABLING WORKS DELIVERY AGREEMENT

**NEC3 ENGINEERING AND CONSTRUCTION SHORT CONTRACT**

**Introduction**

**NEC3 Engineering and Construction Short Contract**

This Delivery Agreement incorporates the NEC 3rd edition engineering and construction short contract April 2013 (the **NEC Short Contract**), including the additional public sector Z Clauses published by NEC to comply with the requirements of The Public Contracts Regulations 2015.

The following rules apply to the incorporation of clauses into a Delivery Agreement:

The conditions of contract set out below shall be incorporated unless varied by an incorporated amendment to contract or as otherwise agreed in writing by the *Employer* and Places for People;

The amendments to contract clauses set out below shall be incorporated unless otherwise agreed in writing by the *Employer* and Places for People.

This Delivery Agreement will only be used for Enabling Works as defined in the Framework Agreement.

Enabling Works Delivery Agreement

**THIS AGREEMENT** is dated

BETWEEN:

(1) [..............................] of [..................................] (**the ‘*Employer’***)

AND

1. [..............................] of [..................................] (**the ‘*Contractor’***)

for the *services* of […………………………..]

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated [ ] made between **PLACES FOR PEOPLE GROUP LIMITED** and the *Contractor* (the ‘Framework Agreement’) and incorporates those provisions of the Model Delivery Agreement set out in Appendix [A11] of the Framework Agreement.

**IT IS AGREED** as follows:-

1. **The *Contractor’s* obligations**

The *Contractor* Provides the Works and comply with his obligations in accordance with the conditions of contract set out in the Contract Data herein.

2. **The *Employer’s* obligations**

The *Employer* pays the amount of money and complies with its obligations in accordance with the conditions of contract set out in the Contract Data herein.

**3. The documents forming part of this agreement are**:

1. The Model Delivery Agreement incorporating the amendments to the NEC3 Engineering and Construction Short Contract
2. The *Contractor's* Offer
3. The *conditions of contract* (NEC 3rd edition engineering and construction short contract April 2013)
4. The Contract Data part one (and any appendices of schedules referred to therein)
5. The Contract Data part two(and any appendices or schedules referred to therein)
6. The Works Information
7. The Price List
8. The Site Information
9. the Framework Agreement

The *Contractor* has checked the documents listed at paragraph 3 above and confirms that there are no discrepancies, inconsistencies or errors within or between any of those documents.

Where there is any conflict or inconsistency within or between the documents listed at paragraph 3 above the contents of the document appearing earlier in the preceding list shall prevail over any document appearing later in the preceding list.

1. **Entire Agreement**

The contract represents the entire agreement between the Parties in relation to the *works* and supersedes all and any prior agreements and/or representations between the Parties.

1. **Retrospective Effect**

Notwithstanding the date of this contract it shall have effect as if it had been executed upon the date the *Contractor* first performed any work (including design, enabling or temporary works) or activities in relation to the *works* (whether under letters of intent or otherwise) and accordingly the duties and obligations contained in the contract shall be deemed to have applied to the carrying out of any of those works and/or the *works* prior to the date of the contract. All payments made in respect of works carried out prior to the date of the contract shall be treated as payments on account of sums due under the contract.

1. **Disputes**

Any difference or dispute arising under or out of or in connection with the contract shall be resolved in accordance with the *conditions of contract*.

**In witness whereof** the contract has been executed by the following parties as a deed and delivered on the date stated above

[Execution blocks to be updated as appropriate]

Executed as a deed by )

**[*Employer*]**  )

acting by: )

Director

Director/Secretary

Executed as a deed by )

**[*Contractor*]**  )

acting by: )

Director

Director/Secretary

Contract Data

**The following details the Contract Data which will be provided by the *Employer* and the *Contractor* for each Delivery Agreement.**

**Certain defined terms and information in the Contract Data will be common to all Delivery Agreements other information included in the Contract Data will be specific to individual Projects.**

The *Employer* is

|  |  |
| --- | --- |
| Name | [**to be agreed on a project specific basis**] |
| Address |  |
| Telephone |  |
| E-mail address |  |

The *Employer’s* delegate is

|  |  |
| --- | --- |
| Name | [**to be agreed on a project specific basis**] |
| Address |  |
| Telephone |  |
| E-mail address |  |

The *Employer’s* delegate is authorised to perform all duties and responsibilities of the *Employer* up to [Completion/defects date]\* excluding the following:

* Termination
* [to be agreed on a project specific basis]

***\*delete as appropriate***,

The *works* are *[to be agreed on a project specific basis]*

The *site* is *[to be agreed on a project specific basis]*

The *starting date* is ***[to be agreed on a project specific basis]***

The *completion date* is***[to be agreed on a project specific basis]***

The *period for reply* is **2 weeks**

The *defects date* is ***[to be agreed on a project specific basis]***

The *defect correction period* is 24 hours for ‘Emergency Defects’, 7 days for ‘Serious Defects’ and 4 weeks for ‘Routine Defects as defined by the *Employer* in accordance with Clause 40.3

The *delay damages* are ***[to be agreed on a project specific basis]***per day

The *assessment day* is the ***[to be agreed on a project specific basis]*** day of each month

The *retention* is ***[to be agreed on a project specific basis] %***

Does the United Kingdom Grants, Construction and Regeneration Act (1996) apply? **Yes**

**If Clause 100 (The Contracts (Rights of Third Parties) Act 1999) is used**

* Term person or organisation

……………….. ………………..

……………….. ………………..

The *Adjudicator* is

**[Either insert the Adjudicator’s Name, Address, Telephone, Fax, E-mail address – or leave blank and in default the *Adjudicator nominating body* is as stated below namely the Royal Institution of Chartered Surveyors]**

The interest rate on late paymentsis  **[ ] %** per complete week of delay

The *Contractor* is not liable to the *Employer* for loss of or damage to the *Employer’s* property in excess of ***[to be agreed on a project specific basis]***for any one event.

The *Employer* provides this insurance - Insurance for all existing buildings and property existing within the Site or at the sole discretion of the *Employer* he may elect to ‘self-insure’ such existing buildings and property and in doing so accepts all of the *Employer’s* associated risks arising out of or in relation to such ‘self-insurance’. In accordance with an Employer’s decision to ‘self-insure’ they do not accept any additional insurance premium/cost from the *Contractor*.   ***[to be agreed on a project specific basis]***

The minimum amount of cover for the third insurance stated in the Insurance Table is £10,000,000

The minimum amount of cover for the fourth insurance stated in the Insurance Table is **£10,000,000**

The *Adjudicator nominating body* is **Royal Institution of Chartered Surveyors**

The *tribunal* is the **Courts of England**

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions, amendments, alterations, additions and deletions which take priority over the standard form short contract:

# OPTION Z: AMENDMENTS TO CONTRACT

# The provisions of the *additional conditions of contract* prevail over all other provisions of this contract.

# The following clauses of this contract shall be amended:

**1 General**

11.2 (1)After Works Information insert: ‘including the execution of any collateral warranties stated in the Works Information and’.

11.2 (14)Insert a new definition:

‘Framework Agreement’ is the framework agreement between **PLACES FOR PEOPLE GROUP LIMITED** and the *Contractor* dated [ ]

11.2 (15)Insert a new definition:

Pool Re Arrangement – Terrorism Insurance purchased through Pool Reinsurance Company Limited as expressed in the ABI standard wording

11.2(16) Insert new definition:

'CDM Regulations' means the Construction (Design and Management) Regulations 2015 and any subsequent amendments or re-enactments.

11.2 (17) Insert a new definition:

HMRC means HM Revenue & Customs.

11.2 (18) Insert a new definition:

Order is the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892).

11.2 (19) Insert a new definition:

Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier.

11.2 (20) Insert a new definition:

Supply is a supply made for VAT purposes under or in connection with this contract by the Contractor and "Supplies" shall be construed accordingly.

11.2 (21) Insert a new definition:

VAT is value added tax chargeable under the Value Added Tax Act 1994 and any similar or replacement tax.

11.2 (22) Insert a new definition:

Intellectual Property Rights are all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, applications for any of the foregoing, patents, copyrights, unregistered designs, know-how, inventions, confidential information and other intellectual property rights

11.2(23) Fire Safety Strategymeans the specifications and drawings setting out the detailed design for the *works* and specifying all systems, methods, products and materials to be used in the construction and delivery of the external walls of the *works* including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in the documents which the Contract Data states it is in.

11.2(24) Documents means any documents, drawings, plans, models, specifications, schedules, reports, calculations, information and/or similar in any media prepared by or on behalf of the *Contractor* in connection with the *works*.

11.2(25) Intellectual Property Rights are all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, applications for any of the foregoing, patents, copyrights, unregistered designs, know-how, inventions, confidential information and other intellectual property rights.

11.2(26) Law is any act of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them, any European Directives or Regulations legally enforceable in England and Wales and any rules, regulations, orders, bye-laws or codes of practice of any local or other competent authority.

12.1 Delete clause 12.1 and replace with:

'In this contract, except where the context requires otherwise:

• words in the singular also mean in the plural and the other way round,

• words in the masculine also mean in the feminine and neuter,

• references to a document include any revision made to it in accordance with this contract,

• references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it and

• references to a standard include any current relevant standard that replaces it.

12.2 Delete " the country where the *site* is" and insert "England and Wales".

12.5 Insert new clause 12.5:

12.5 The *Contractor* complies with the Law.

12.6 Insert new clause 12.6

12.6 The *Contractor* complies with the following provisions of the Framework Agreement as if such provisions were included in this contract mutatis mutandis:

12.6.1 Schedule 6, Part 1 (Legal Requirements)

12.6.2 Schedule 6, Part 2, paragraph 1 (Confidentiality)

12.6.3 Appendix 4 (Data Protection)

1. Providing the Works

20.3 Insert new clause 20.3

20.3.1 Notwithstanding any contrary provision in the contract or any documents forming part of the contract it is hereby expressly agreed and acknowledged that: -

1. no fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the *works* to be delivered under this contract and/or method, system, design, products and materials provided by the *Contractor*, and
2. The *Contractor* exercises in the design of the *works* the reasonable skill, care and diligence to be expected of a properly qualified and competent architect, engineer or as the case may be such other professional designer or technician of the relevant discipline experienced in carrying out the design of works similar in size, scope and complexity to the *works*.’

20.4 Insert a new clause 20.4:

For the purposes of the CDM Regulations, the *Contractor* is the principal contractor and the principal designer in respect of the *works* and performs all the functions and obligations required to be performed by the principal contractor and the principal designer under the CDM Regulations and confirms that it has the skills, knowledge, experience, resources and organisational capability necessary to fulfil the role of principal contractor and principal designer under and in accordance with the CDM Regulations and in a manner that secures the health and safety of any person affected by the *works*. In particular the *Contractor*:

20.4.1 complies with all CDM Regulations, including in relation to the provision and maintenance of a health and safety file;

20.4.2 supplies copies of the health and safety file to the *Employer* as soon as reasonably practicable and in the event no later than four weeks after the Completion Date.

20.5 Insert a new clause 20.5:

The *Contractor* does not use, specify, authorise, cause or allow to be used in the works any materials, equipment, products and/or kits that

• do not conform with British or European Standards (where appropriate) or codes of practice (or, where no such standards exists, do not confirm with British Board of Agrément Certificate) and/or

• are generally known in the construction industry to be deleterious, in the particular circumstances in which they are specified for use (whether by themselves or in a particular situation or in combination with other substances or materials) to health and safety and/or the durability of buildings and/or structures and/or reducing or possibly reducing the normal life expectancy of the *works* and/or any part or component of the *works* and/or

• do not comply with the guidance set out in the “Good Practice in the Selection of Construction Materials 2011” published by the British Council for Offices and/or

• are specifically prohibited by the contract.

The *Contractor* immediately notifies the *Employer* if it becomes aware of any proposed or actual specification and/or use in the *works* of any products and/or materials that do not comply with this clause 20.5.

20.6 Insert new clause 20.6:

22.1 The *Contractor* grants the *Employer* with immediate effect an irrevocable, royalty free, non-exclusive licence to copy and use the Documents for any purpose related to the *works* provided that the *Contractor* is not liable to the *Employer* for use of the Documents for any purpose other than that for which the relevant Document was prepared or provided. Such licence carries the right to grant sub-licences, is transferrable to third parties and survives termination of the *Contractor's* obligation to Provide the Works.

22.2 The *Contractor* warrants to the *Employer* that no design or document that it prepares and nothing else that it contributes to the *works* shall infringe any Intellectual Property Rights, and indemnifies the *Employer* in respect of any legal liability and related costs arising out of or in connection with any such infringement of any Intellectual Property Rights.

22.3 The *Contractor* waives absolutely all moral rights under Chapter IV Part 1 of the Copyright Designs and Patents Act 1988 which the *Contractor* may have in the Documents and/or the *works* and where it is not the author procures a waiver from the author of any similar moral rights the author may have in respect of the Documents and/or the *works*.

**5 Payment**

50.3A Insert a new clause 50.3A as follows:

50.6.1 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 50.3A notwithstanding any other provision of this contract.

50. 3A.2 Subject to clause 50.3A.8, any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this contract is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:

51. 3A.2.1 the time for payment or provision of the consideration; and

51. 3A.2.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.

50. 3A.3 The Parties acknowledge that the *Employer* has not confirmed in writing whether the requirements specified in article 8(1)(b) of the Order are satisfied in respect of any Supply.

50. 3A.4 The Parties consider that the Reverse Charge will apply to the Supplies so that it is for the *Employer*, on the *Contractor's* behalf, to account for and pay VAT on the Supplies and not for the *Contractor*.

50. 3A.5 During such time as the Reverse Charge applies to the Supplies and no later than 15 working days before any payment by the *Employer* for the Supplies, the *Contractor* will provide to the *Employer* an invoice (which is not a VAT invoice and which will not include any demand for any amount in respect of VAT) showing all the information normally required to be shown on a VAT invoice in respect of the payment in question, including without prejudice to the generality of the foregoing, the amount of VAT due on the payment (subject to the Reverse Charge) and a breakdown of values by VAT rate. The *Contractor* will also annotate such invoice as follows: "Reverse charge: VAT Act 1994 Section 55A applies".

50. 3A.6 The *Contractor* shall promptly provide any information reasonably requested by the *Employer* to assist the *Employer* in complying with its obligations under the Reverse Charge or in providing any information requested of the *Employer* by HMRC.

50. 3A.7 If the requirements in article (8)(2)(a) and (b) of the Order are met in relation to any Supply, the *Employer* and the *Contractor*, pursuant to article 8(2)(c) of the Order, agree to treat the Supplies as not being excepted supplies (within the meaning of articles 3(2) and 8 of the Order).

50. 3A.8 Notwithstanding clause 50. 3A.2, where the *Employer* has operated the Reverse Charge on Supplies but HMRC confirms in writing to the *Employer* that the Reverse Charge does not apply in respect of those Supplies and that, notwithstanding that the *Employer* has operated the Reverse Charge, the *Contractor* has to account for VAT in respect of those Supplies then, subject to receipt by the *Employer* of a valid VAT invoice from the *Contractor*, the *Employer* will pay the VAT due on those Supplies to the *Contractor* within 5 working days after the later of:

50.6.8.1 obtaining any net repayment or credit from HMRC arising from the incorrect operation of the Reverse Charge after correcting both:

(a) the output tax overpaid to HMRC by the *Employer* (for which the *Employer* would obtain a repayment or credit); and

(b) the input tax overpaid to the *Employer* by HMRC (which the *Employer* would owe to HMRC); and

50.6.8.2 obtaining repayment or credit from HMRC in respect of the VAT due on the relevant Supplies to the *Contractor*,

and the *Employer* undertakes to claim such repayment or credit from HMRC without unreasonable delay after receiving confirmation from HMRC or a valid VAT invoice from the *Contractor*, each as mentioned above."

**8 Indemnity, insurance and liability**

82.1 **Add** to the Insurance Table – after ‘loss of or damage to the works’ insert:-

‘save as caused by

* Terrorism to the extent not insured under the Pool Re Arrangement
* Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds’.

**9 Termination and dispute resolution**

90.2 Delete clause 90.2 and insert the following:

90.2 Either Party may terminate if the other Party becomes subject to any of the following events:

* + - 1. it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
      2. it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
      3. it applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
      4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
      5. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed over it (being a company, partnership or limited liability partnership);
      6. the holder of a qualifying floating charge over its assets (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
      7. a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets; or
      8. being an individual, it is the subject of a bankruptcy petition, application or order;
      9. a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten working days;
      10. any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (i) above (inclusive);
      11. it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
      12. in relation to a Party which is a partnership, the dissolution thereof.

**Insert the following new section:**

**‘10 The Contract (Rights of Third Parties) Act 1999**

100.1 A person who is not a party to this contract shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified.

100.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.’

**The *Contractor’s* Offer**

The *Contractor* is

|  |  |
| --- | --- |
| Name | ***[to be agreed on a project specific basis]*** |
| Address |  |
| Telephone |  |
| E-mail address |  |

The percentage for overheads and profit added to the Defined Cost for people **is *[as set out in the Framework Commercial Model]* %**

The percentage for overheads and profit added to other Defined Cost is***[as set out in the Framework Commercial Model]* %**

The offered total of the Prices is ***[to be agreed on a project specific basis]***

Enter the total of the Prices from the Price List.

**Price List**

**Entries in the first four columns in the Price List are made either by the Employer or the tenderer.**

**If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate Columns being left blank.**

**If the *Contractor* is to be paid an amount for the item of work which is to be the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.**

***[to be agreed on a project specific basis]***

|  |  |  |  |  |  |
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| **Item number** | **Description** | **Unit** | **Quantity** | **Rate** | **Price** |
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|  |  |  | **The total of the Prices** | |  |

**Works Information**

**The Works Information should be a complete and precise statement of the *Employer’s* requirements.**

**If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Employer’s* intention. Information provided by the *Contractor* should be listed in the Works Information only if the *Employer* is satisfied that it is required, is part of a complete statement of the *Employer’s* requirements and is consistent with other parts of the Works Information.**

**1 Description of the works**

**Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.**

………………………………………………………………………………………..

………………………………………………………………………………………..

***[to be agreed on a project specific basis]***

**2 Drawings**

**List the drawings that apply to this contract.**

**Drawing number revision Title**

…………………. ………… …………………………..

…………………. ………… …………………………..

…………………. ………… …………………………..

…………………. ………… …………………………..

***[to be agreed on a project specific basis]***

**3 Specifications.**

**List the specifications which apply to this contract.**

**Title Date of revision Tick if publically available**

…………………. ………………… …………………………..

…………………. ………………… …………………………..

…………………. ………………… …………………………..

…………………. ………………… …………………………..

***[to be agreed on a project specific basis].***

Schedule 13 (Template Works Information) is deemed to be included in the Works Information

**4 Constraints on how the *Contractor* Provides the Works**

**State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer.***

………………………………………………………………………………………..

………………………………………………………………………………………..

***[to be agreed on a project specific basis]***

**5 Requirements for the programme.**

**State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.**

**State what the use of the *works* is intended to be at their Completion as defined in clause 11.2(1)**

All programmes shall be in a Gantt chart format. They shall contain the following information, as a minimum:-

* The *starting date* and Completion Date
* The latest forecast of the *Contractor’s* planned Completion
* The order and timing of the operations which the *Contractor* plans to do in order to Provide the Works
* Other information which the Works Information requires the *Contractor* to show on the programme

The first programme is to be submitted to the *Employer* two weeks prior to the *starting date.*  The programme is to be updated and similarly distributed each month until the date of Completion.

………………………………………………………………………………………..

………………………………………………………………………………………..

***[Insert any project specific requirements]***

**6 Services and other things provided by the *Employer***

**Describe what the Employer will provide, such as services (including water and electricity) and ‘free issue’ Plant and Materials and equipment.**

**Item Date by which it will be provided**

……………………………………………………. ………………………………

……………………………………………………. ………………………………

……………………………………………………. ………………………………

***[to be agreed on a project specific basis]***

**Site Information**

**Give information about the *site* such as ground conditions and other information which is likely to affect the *Contractor’s* work such as limitations on access and the position of adjacent structures.**

………………………………………………………………………………………..

………………………………………………………………………………………..

………………………………………………………………………………………..

………………………………………………………………………………………..

*[to be agreed on a project specific basis]*